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In re Application of
NABEL, Gary J., et al.
Application No.: 09/913,909
PCT Application No.: PCT/US98/27364
International Filing Date: 23 December 1998
Priority Date: 23 December 1997
Attorney Docket No.: NIH220.001APC
For: IMMUNIZATION FOR EBOLA VIRUS
INFECTION

DECISION ON
PETITION
UNDER 37 CFR 1.137(b)

Applicants' "Petition for Revival of an International Application for Patent Designating the U.S. Abandoned Unintentionally Under 37 CFR 1.137(b)" filed in the United States Patent and Trademark Office on 17 August 2001 is **GRANTED**.

BACKGROUND

On 23 December 1998, applicants filed an international application, No. PCT/US98/27364, which claimed a priority date of 23 December 1997. A copy of the application was not required as the application was filed in the United States Receiving Office (RO/US).

Applicants elected the US in a demand filed on 23 July 1999. The deadline for entering the national stage was thus thirty months from the priority date, 23 June 2000. The application went abandoned when applicants failed to make the necessary filing.

On 17 August 2001, applicants filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, a petition to revive the international application; the requisite petition fee; the requisite basic national fee as required by 35 U.S.C. §371(c)(1); and a declaration as required by 35 U.S.C. §371(c)(4).

DISCUSSION

A petition to revive an abandoned application under 37 CFR 1.137(b) must be filed without intentional delay from the time the application became abandoned and/or applicant first became aware of the abandoned status of the application. A petition under 37 CFR 1.137(b) must be accompanied by (1) a statement that the entire delay in filing the required reply from the due

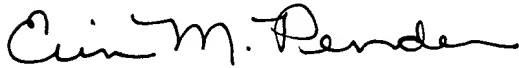
date for the reply until the filing of a grantable petition was unintentional, (2) a proposed response, (3) the petition fee required by law (37 CFR 1.17(m)), and (4) a terminal disclaimer and fee (if the international application was filed prior to June 8, 1995).

Applicants state "the entire delay in filing the required reply from the due date for the required reply until the filing of this petition under 37 CFR 1.137(b) was unintentional." As "this petition" is a grantable petition, the statement complies with 37 CFR 1.137(b)(3). The appropriate national fee, petition fee and international application have been submitted. A terminal disclaimer is not required as application was filed on 23 December 1998. Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.

The \$130.00 surcharge for filing the oath or declaration later than 30 months from the priority date as required by 37 CFR 1.492(e) will be charged to counsel's Deposit Account No. 11-1410 as authorized in the transmittal letter filed 17 August 2001.

CONCLUSION

The petition to revive the application abandoned under 37 CFR 1.137(b) is **GRANTED** as to the National Stage in the United States of America. The application has an international filing date of 23 December 1998 under 35 U.S.C. §363 and a date of 17 August 2001 under 35 U.S.C. §371. This application is being forwarded to the National Stage Processing Division of the Office of the PCT Operations for continued processing.



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